IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8663 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHWINKUMAR HARIPRASAD DAVE

Versus

SAIJ GRAM PANCHAYAT

Appearance:

MR AK CLERK for Petitioners

MR MK VAKHARIA for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/04/2001

ORAL JUDGEMENT

Rule. Mr. Vakharia, learned advocate, for the respondent waives service of rule.

2. Ashwinkumar Hariprasad Dave and others,

petitioners have filed this petition in which the petitioners prayed that the petitioners have not been given any opportunity of hearing before withdrawing the said allowance granted from 1.4.1997. He has also referred to the government resolution passed by the Panchayat on 6.7.1996, wherein the petitioners have been paid salaries from 1.4.1997 till 31.10.1997. He has also alleged that the government employees have been paid as per the Fourth Pay Commission recommendations from 1.4.1997. When the matter was placed for hearing this Court (Coram: H.L. Gokhale, J) has passed a short, but speaking order on 2.12.1997, in which the learned judge has observed that:

> "On perusing the Resolution one does not know what is the objection raised and considered by the gram panchayat. It also appears that the employees have not at all been taken into confidence or have been given any opportunity of making any representation against this proposed reduction in salary. In the circumstances, issue notice to the respondents returnable on 16th December, 1997. In the meanwhile and until further orders, the respondents will not act on the Resolution No. 33 dated 12.11.1997 as also the letter dated 26th November, 1997 and shall continue to pay their salaries including that of the month of November, 1997 as per the Fourth Pay Commission recommendations which the first respondent - gram panchayat had earlier accepted. Direct service is permitted."

3. Mr. A.K. Clerk, learned advocate for the petitioner now produced judgement and award of the Labour Court, Kalol, North Gujarat, dated 27.5.1999 in Reference (LCKD) No. 7/1984 below Exh. 10 where the Labour Court has directed that interim relief as per Exh. 10 be given to 16 employees from 1.9.1994 as per Fourth Pay Commission recommendation and also dearness allowance be paid. The Labour Court ordered to pay the said amounts within two months from that day. The learned advocate for the petitioner states that the award of the Labour Court has been implemented and the same has not been challenged by the respondents in any further proceedings. In view of the same, nothing survives in this petition. Mr. Vakharia, learned advocate for the respondents also confirms this aspect in this behalf.

4. The learned counsel for the petitioner states that originally the panchayat has passed a Resolution dated 20.8.1996 in which the panchayat had decided to

grant Fourth Pay Commission recommendations. He further states that subsequently the panchayat has by another Resolution dated 12.11.1997 wherein the panchayat decided to recover arrears which have been given to the employees. In view of the aforesaid judgement of the Labour Court, Resolution dated 12.11.1997 cannot be implemented and enforced as the same is contrary to and inconsistent with the aforesaid judgement and award of the Labour Court. The said Resolution is therefore required to be quashed.

5. In view of the fact that when the panchayat has accepted the award of the Labour Court, there is no need to file any counter affidavit or affidavit-in-reply on behalf of the panchayat.

6. In the result, the petition is allowed. The Resolution dated 12.11.1997 Annexure-F passed by the Panchayat is quashed and set aside. The respondents are directed to continue to pay salary to the petitioners as per the Resolution dated 20.8.1996 regularly in view of the judgement of the Labour Court, Kalol. Rule is made absolute accordingly.

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